

September 30, 2004



John Cody  
Legal Advisor  
Chairman Michael Powell's Office  
Federal Communications Commission  
445 Twelfth St., SW  
Washington, DC 20006

Re: MB Docket No. 99-25

Dear John:

On behalf of its clients,<sup>1</sup> MAP submits this *ex parte* letter to demonstrate that the recent requests in this docket are fully within the Commission's authority to address in the currently-pending reconsideration petitions in this docket and have been debated on the record before the Commission. This more than sufficient notice will allow the Commission to move expeditiously.

*Translators.* MAP and its clients have requested the Commission reconsider the primary status of translators in relation to LPFM stations that originate local programming. The merits of whether translators ought to be fully primary to LPFM stations was raised as early as March 2000 in the first set of reconsideration petitions filed in this docket.<sup>2</sup> The question has been further addressed several times by MAP and its clients. Over time, MAP and its clients have refined its proposal to carefully address the most appropriate way to transmit the most original and local programming to Americans. Specifically, as we have recently, we reiterate our request that the Commission conclude that LPFM stations that offer local programming are primary to translators.<sup>3</sup> At a minimum, LPFM stations offering local programming should be primary to noncommercial translators that are fed programming via satellite, rather than directly from local transmitters. *See* 47 CFR § 74.1231.<sup>4</sup> The Commission could allow translators displaced under this policy to make major changes to take advantage of the more flexible translator spacing rules to find available spectrum.<sup>5</sup>

*Technical Changes to Improve Deployment.* LPFM advocates have requested a number of minor technical changes that will assist LPFM applicants and stations. This list includes: extending the time for

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<sup>1</sup> MAP's current clients include: Prometheus Radio Project; National Federation of Community Broadcasters, Future of Music Coalition; United Church of Christ, Office of Communication, Inc.; and Free Press.

<sup>2</sup> National Public Radio Petition for Reconsideration, MM Docket 99-25 at 19-20 (filed March 16, 2000); UCC *et al.* Opposition and Response to Petitions for Reconsideration, MM Docket 99-25 at 4-5 (filed April 24, 2000).

<sup>3</sup> *See e.g.* Prometheus Radio Project *et al.* Mitre Study/Localism Comments, MM Docket 99-25 at 18-20 (filed Oct. 14, 2003). Other options are available to determine which services most promote localism. For example, LPFM stations could be primary to translators that retransmit programming created more than 400 kilometers away from the translator transmitter site, or primary to translators that are one of more than ten translators that repeat the same signal. *Id.* at 20. The Commission could also limit the total number of translators that could be owned by any single entity. *See also* Prometheus *Ex Parte* Letter at 2 (filed May 20, 2004).

<sup>4</sup> NFCB *Ex Parte* Letter Attach (filed Feb. 20, 2004); Prometheus *et al.* Mitre Study/Localism Comments at 23.

<sup>5</sup> Prometheus *Ex Parte* Letter at 2.

construction permits from 18 months to 3 years;<sup>6</sup> amending ownership policies to allow for typical and appropriate changes in governance board membership;<sup>7</sup> and allowing LPFM stations appropriate flexibility to make changes to locate open frequencies where they are available to resolve mutual exclusivity and if they are bumped.<sup>8</sup> Specifically, LPFM advocates have asked the Commission to alter the definition of a minor change to include transmitter relocation of up to 5.6 km instead of 2 km for LP100 licenses (and up to 3.2 km for LP10 licenses).<sup>9</sup> In addition, we have asked that applicants working together to remove a mutual exclusivity or create a time-sharing agreement be allowed to submit minor changes or to move to another open channel.<sup>10</sup> Allowing LPFMs to use the more flexible translator rules including directional antennas or contour overlaps would be appropriate for stations that are already on the air but are being bumped, or where mutual exclusivity could be resolved and improve spectrum efficiency.<sup>11</sup> These would also alleviate burdens on Commission staff. Regular windows for major changes could also help alleviate this problem.

*Local Entities and Enforcement of FCC Rules.* LPFM advocates have requested since the outset of this proceeding that the Commission reverse its decision to limit LPFM stations to local entities for only two years and its decision to permit multiple ownership of LPFM stations.<sup>12</sup> We also requested the Commission clarify that the definition of local broadcasting include only programming that was originally produced within 10 miles of the LPFM transmitter.<sup>13</sup> Advocates also encourage the Commission to reject applications from entities that do not comply with the FCC's rules to discourage improper applications and to encourage voluntary withdrawals by entities that do not comply with the Commission's rules.

*EAS Rules and Equipment Certification.* In addition to these concerns, the Commission should take steps to clarify and make EAS compliance affordable for LPFM stations, which was the Commission's original intent.<sup>14</sup>

We appreciate the Chairman's and the Commission's commitment to localism via low power radio. We hope that this summary of the current state of the record will make it easier for the Commission to address several concerns that will quickly and easily improve LPFM licensing.

Sincerely,

Cheryl A. Leanza

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<sup>6</sup> See, e.g., Prometheus *et al.* Mitre Study/Localism Comments at 22.

<sup>7</sup> See, e.g., *id.* at 21-22.

<sup>8</sup> UCC *et al.* Second Petition for Reconsideration or Clarification, MM Docket 99-25 at 6-7 (filed June 11, 2001).

<sup>9</sup> *Id.* at 8-9.

<sup>10</sup> *Id.* at 6-7.

<sup>11</sup> See UCC *et al.* Second Petition for Reconsideration or Clarification at 8-9; Prometheus *Ex Parte* Letter at 2; Prometheus/MAP *Ex Parte* Letter, MM Docket 99-25 (filed August 17, 2004).

<sup>12</sup> UCC *et al.* Petition for Reconsideration, MM Docket 99-25 at 3-6 (filed March 16, 2000).

<sup>13</sup> UCC *et al.* Second Petition for Reconsideration or Clarification at 10-11.

<sup>14</sup> In the Commission's original *Report and Order*, it determined that to reduced expenditures for LPFM stations, LPFM stations must install and operate certified EAS decoding equipment which will alert station personnel to emergency alerts but it extended the same exemption that applies to Class D noncommercial educational TV and LPTV stations, omitting an obligation to install or operate the encoder portion of EAS systems. 15 FCC Rcd at 2280-81 (2000); UCC *et al.* Second Petition for Reconsideration or Clarification at 7-8 (explaining that changes to the certification of EAS equipment would make it less expensive); Public Notice DA-02-2312 (2002) (imposing obligation to use more expensive certified EAS equipment).